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7 Attorney for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 CLARENCE LIND; JACQUIE LIND

11 Plaintiffs,

12 vs.

13 WAL-MART STORES, INC., a
14 Delaware Corporation,

15 Defendant.
16

17 **08 CV 1923 BEN LSP**

18 COMPLAINT FOR DAMAGES
19 FOR PERSONAL INJURY;
20 DEMAND FOR JURY TRIAL

21 For a first cause of action, Plaintiff CLARENCE LIND alleges:

22 **JURISDICTION**

23 1. The jurisdiction of this Court over the subject matter of this action is
24 predicated on 28 USC Section 1332 in that it is a civil action between citizens of
25 different states and the amount in controversy exceeds \$75,000.00, exclusive of interest
26 and costs.

27 2. Plaintiffs CLARENCE LIND and JACQUIE LIND are and at all times
28 mentioned herein residents of the State of Colorado.

3 Defendant WAL-MART STORES, INC. is a corporation incorporated
under the laws of the State of Delaware having its principal place of business in the State
of Arkansas.

VENUE

4. The claims giving rise to this complaint arose in this district.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANT

WAL-MART STORES, INC. FOR NEGLIGENCE

BY PLAINTIFF CLARENCE LIND

5. Plaintiff hereby realleges each and every allegation contained in Paragraphs 1 through 4 as though fully set forth herein.

6. Plaintiff is informed and believes and thereon alleges that Defendant WAL-MART STORES, INC., at all times herein relevant, owned, operated, managed, possessed, maintained, repaired, installed, inspected, supervised, leased, developed, constructed or in some form or fashion controlled that certain Wal-Mart Supercenter, located at 2150 N. Waterman Avenue, El Centro, California (hereinafter referred to as the "PREMISES").

7. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendant WAL-MART STORES, INC. was engaged in the business of managing, controlling, constructing, repairing, designing, owning, leasing, maintaining, installing or supervising the PREMISES and are in some actionable manner tortiously liable for the acts and omissions or conduct alleged herein.

8. On or about November 21, 2006, Plaintiff CLARENCE LIND entered upon the PREMISES for the specific purpose of shopping at the Supercenter.

9. Plaintiff is informed and believes and thereon alleges that at the aforementioned time and place, Defendant WAL-MART STORES, INC. did, among other things, negligently, carelessly, recklessly, or otherwise tortiously act, or fail to act, in the ownership, operation, management, control, supervision or maintenance, of the above-described PREMISES so as to cause or to permit to exist upon said PREMISES unsafe and harmful conditions which were likely to result in personal injuries to invitees within, on, upon or near said PREMISES.

10. On or about November 21, 2006, an employee of Defendant WAL-MART

1 STORES, INC. negligently caused a frozen turkey to fall from the check-stand hitting
2 Plaintiff's foot and causing Plaintiff to fall to the ground.

3 11. As a direct result of the above-described acts, conduct, or omissions of said
4 Defendant, Plaintiff was caused to, and did sustain serious and permanent bodily injuries
5 including, but not limited to, a right hip intertrochanteric fracture which required open
6 reduction internal fixation. Plaintiff was hospitalized from November 21, 2006 through
7 November 29, 2006 and thereafter transferred to a rehabilitation hospital from November
8 29, 2006 through December 14, 2006.

9 12. As a direct result of the above-described acts, conduct, or omissions of the
10 Defendant, Plaintiff CLARENCE LIND has sustained and incurred, and is certain in the
11 future to sustain and incur, losses, injuries and damages itemized as follows:

12 (a) Disabling and serious personal injuries, including pain, suffering
13 and anguish in connection therewith, all to Plaintiff's general damage in the amount of
14 \$1,000,000.00;

15 (b) Expenditures for past, present and future medical services and other
16 curative items in connection with the treatment of Plaintiff's said injuries in a sum that
17 has yet to be ascertained;

18 (c) Loss and impairment of Plaintiff's earning capacity, all to Plaintiff's
19 damage in a sum that has yet to be ascertained.

20 **SECOND CLAIM FOR RELIEF AGAINST DEFENDANT**
21 **WAL-MART STORES, INC. FOR LOSS OF CONSORTIUM**
22 **BY PLAINTIFF JACQUIE LIND**

23 13. Plaintiff hereby realleges each and every allegation contained in Paragraphs
24 1 through 10 as though fully set forth herein.

25 14. At all times mentioned in this complaint, plaintiff CLARENCE and plaintiff
26 JACQUIE were husband and wife.

27 15. As a direct result or cause of defendant's negligent conduct as herein
28 alleged, plaintiff CLARENCE, suffered the injuries herein alleged.

1 16. Before suffering these injuries, Plaintiff CLARENCE was able to and did
2 perform all the duties of a husband and did perform all these duties including, but not
3 limited to, assisting in maintaining the home, and providing love, companionship,
4 affection, society, moral support, and solace to plaintiff JACQUIE.

5 17. As a direct result or cause of the injuries sustained by plaintiff
6 CLARENCE, he is unable, among other things, to assist with housework, have sexual
7 intercourse, participate in family, recreational, or social activities with plaintiff
8 JACQUIE. Due to the nature of the injuries sustained by plaintiff CLARENCE, his
9 ability to provide plaintiff JACQUIE with love, companionship, affection, society, moral
10 support, and solace has been significantly diminished. Plaintiff JACQUIE has been
11 deprived of plaintiff CLARENCE's care, comfort, protection, society, support, services
12 and consortium, all to her general damage in the amount of \$250,000.00.

13 WHEREFORE, Plaintiffs pray for judgment against the Defendant as
14 follows:

15 ON THE FIRST CAUSE OF ACTION FOR PLAINTIFF CLARENCE:

- 16 1. General damages in the amount of \$1,000,000.00;
17 2. All medical, incidental and special expenses in an amount that is yet to be
18 ascertained;
19 3. Loss and impairment of earning capacity in an amount that is yet to be
20 ascertained;

21 ON THE SECOND CAUSE OF ACTION FOR PLAINTIFF JACQUIE:

- 22 4. General damages in the amount of \$250,000.00 excess of the minimum
23 jurisdictional amount of this Court and according to proof;
24 5. Special damages according to proof;

25 ///

26 ///

27 ///

28 ///

ON ALL CAUSES OF ACTION FOR PLAINTIFFS:

6. Prejudgment interest according to law;
7. Costs of suit; and
8. Any other and further relief that the court considers proper.


JACOBS, JACOBS & EISFEDLER LLP

By: 
STANLEY K. JACOBS
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury on all facts and issues related to this complaint.

JACOBS, JACOBS & EISFELDER LLP

By: 
STANLEY K. JACOBS
Attorneys for Plaintiffs

s9:Lind\Pleading\Complaint.wpd

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Clarence Lind; Jacquie Lind
JML(b) County of Residence of First Listed Plaintiff Mesa County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jacobs, Jacobs & Eisfelder, LLP, 11755 Wilshire Blvd., Ste. 2150,
Los Angeles, Calif. 90025, (310) 473-9211

DEFENDANTS

Wal-Mart Stores, Inc., a Delaware Corporation
OMZCounty of Residence of First Listed Defendant Benton County
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

08 CV 1923 BEN LSP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|---------------------------------------|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sec. 1332Brief description of cause:
Personal injury due to negligence of Def. Wal-Mart; loss of consortium

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

1,250,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

156272

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

JAC 10/20/08

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

156272 - TC

**October 20, 2008
11:58:20**

Civ Fil Non-Pris

USAO #: 08CV1923

Judge...: ROGER T BENITEZ

Amount.: \$350.00 CK

Check#: 4158

Total-> \$350.00

FROM: LIND VS
WAL-MART